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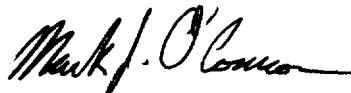
William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, Room 202  
Washington, D.C. 20554

Re: Omnipoint Communications, Inc.  
August 22, 1994 Petition for Reconsideration  
PP Docket No. 93-253

Dear Mr. Caton:

It has come to our attention that, due to an inadvertent error, the above-referenced Petition for Reconsideration did not include pages 13, 14, and 15 in the document filed on August 22, 1994. Attached hereto are twelve copies of the missing pages. As indicated by the attached service list, we will serve today a copy of this letter and the missing pages on all parties that filed Petitions for Reconsideration, as well as ITS, via hand-delivery or overnight messenger service. We apologize for any inconvenience this oversight may have caused.

Sincerely,



Mark J. O'Connor

Enclosures

cc (w/enclosures):

Dr. Robert Pepper  
Mr. Donald Gips  
Mr. Gregory Rosston

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control.<sup>22</sup> We believe that, at a minimum, the Commission can and should provide assurances to entrepreneurs that the following participation by an investor (either in the applicant or in an attributable investor in the applicant), who does not have *de jure* control and is outside the "control group", does not raise issues of *de facto* control, either separately or in conjunction with other listed acts:

1. Control of 33% or less of the number of directors.
2. Minority shareholder approval of certain transactions, including amendment of the corporate by-laws, issuance of certain stock (including a right of first refusal), sale of certain large assets or a large percentage of the total assets, cumulative voting for the board of directors, merger or dissolution of the company.<sup>23</sup>
3. A debt financing arrangement with the minority shareholder that carries no unusual creditor provisions likely to lead to a transfer of control.<sup>24</sup>
4. A management agreement with a minority shareholder or an agreement for construction of the system with a minority shareholder that otherwise meets the Intermountain standards.<sup>25</sup>

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<sup>22</sup> Licensees and applicants, and their counsel when providing opinion letters, have found the Commission's prior guidelines to be quite helpful. For example, the Intermountain standards have helped to reduce transaction costs associated with management agreements. Intermountain Microwave, 24 RR 983 (1963).

<sup>23</sup> McCaw Cellular Communications, 4 FCC Rcd. 3784, 3789 (1989); News International, PLC, 97 F.C.C.2d 349, 356-58 (1984).

<sup>24</sup> See Urban Telecommunications Corp., 7 FCC Rcd. 3867, 3869 (1992); In the Matter of Corporate Ownership Reporting and Disclosure by Broadcast Licensees, 97 F.C.C. 2d 997, 1022 (1984), *recon. granted*, 58 RR 2d 604 (1985), *further recon. granted*, 1 FCC Rcd. 802 (1986).

<sup>25</sup> Millicom of Omaha, Inc., 2 FCC Rcd. 3754, 3755-56 (1987).

5. Ownership of up to 20% of the voting equity.<sup>26</sup>

**B. The Commission Should Establish A Reasonable Control Group Standard When Reviewing Eligibility.**

One significant uncertainty in determining eligibility is the composition of the "control group," and especially, who must be included in that group to assure a finding of *de facto* control. To the extent that the Commission can ease its scrutiny on that *de facto* control determination, more entrepreneurs will be able to secure financing at lower risk levels to themselves and their investors.

Omnipoint recommends that the Commission review *de facto* control issues related to the designated "control group" with two objectives. First, the Commission should inquire whether there is substantial evidence of fraud on the Commission, or evidence of an intent to create a "sham" company that would transfer or assign control of the license to an ineligible investor. If the Commission finds an intent to defraud or create a "sham," the licensee's eligibility should be revoked. If no such evidence is found, however, the Commission should sustain the licensee's eligibility unless it finds that the designated "control group" is not in *de facto* control. Under this proposal, the Commission would disqualify an applicant or licensee only in cases where it finds that an entity with a pattern of dominance of the licensee's affairs is not in the designated "control group." The fact that other control groups could have been designated that, in hindsight, would have more perfectly embodied the entities in control should not disqualify the licensee.

**V. The Commission Should Clarify Those Entities That Are Subject To The Attribution Rules.**

The Commission's attribution rules<sup>27</sup> suggest that three categories of entities must be considered in determining an applicant's eligibility to bid on entrepreneur block licenses: the

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<sup>26</sup> See, Section III below.

"applicant," who is the person or entity that appears on the application and the license; the "attributable investors in the applicant," who are persons or entities that hold a direct ownership interest in the "applicant;" and "affiliates" includes those persons or entities with the power to control or with actual control over the applicant or an "investor in the applicant."<sup>28</sup>

**A. The FCC Should Clarify That The Entrepreneur Personal Net Worth Criterion Applies Only To The "Applicant" And "Investors In The Applicant."**

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The personal net worth rule for entrepreneur band eligibility, as currently written, is somewhat ambiguous and needs clarification.<sup>29</sup> We believe that the Commission's intent is to prevent individuals with \$100 million or more net worth from being "applicants" or "attributable investors in applicants," as those terms are described in the attached Diagram 1. We also believe it is also reasonable to infer from the existing rule that the personal wealth restrictions do not apply to individuals who invest in "investors in the applicant." Although the rule mentions "affiliates," the term in this case can only mean the assets of an entity that is owned or controlled

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*(Footnote continued from previous page)*

<sup>27</sup> 47 C.F.R. § 24.709(b)(1).

<sup>28</sup> 47 C.F.R. § 24.720(l). Although the Commission's definition of "affiliate" includes "investors in the applicant," this Petition shall use the term "affiliate" only in reference to those who have control over the applicant but have no direct ownership interest in the applicant. See attached Diagram 1.

<sup>29</sup> The current eligibility restriction for very wealthy individuals provides that:

(2) No application is acceptable for filing and no license shall be granted for Frequency Block C or frequency Block F, if, at the time the application is filed, the applicant (or person holding an interest in the applicant) is an individual and he or she (or affiliates) has \$100 million or greater in personal net worth at the time the applicant's short-form (Form 175) application is filed.

47 C.F.R. §24.709(a)(2).

## CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 1994, a copy of the three missing pages to Omnipoint Communication, Inc.'s Petition for Clarification and Reconsideration, filed on August 22, 1994 with the Federal Communications Commission was served via hand delivery or overnight messenger service upon the following :

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